

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. §§6001-6092**

Re: New England Container Company and Roland Devost  
Declaratory Ruling Request #393

**DISMISSAL ORDER**

This matter comes before the Vermont Environmental Board (Board) on a Petition for Declaratory Ruling filed by New England Container Company and Roland Devost (Petitioners) relating to buildings and land in the Swanton Industrial Park in Swanton, Vermont.

As set forth below, Environmental Board dismisses this matter pursuant to Environmental Board Rule (EBR)18(D) as Petitioners have applied for and have been granted a permit.

**I. Procedural Summary**

On December 21, 2000, and January 4, 2001, respectively, the District #6 Environmental Commission Coordinator (Coordinator) issued Jurisdictional Opinion #6-12-20-00 (JO) and a Project Review Sheet (PRS) in which he determined that the following three changes occurring on Lots 3 and 4 of land in the Swanton Industrial Park in Swanton, Vermont are material changes to Land Use Permits (LUP) 6F0134<sup>1</sup> and 6F0362 and, as such, an Act 250 permit amendment is required pursuant to 10 V.S.A. §§ 6001-6092 (Act 250). Change #1: The clearing, stumping, and filling of land north of the existing building and the construction of a commercial building on lot #3; Change #2: The clearing, stumping, and partial filling of land south of the existing building on lot #3; and Change #3: The clearing, stumping, and filling of lot #4.

On January 19, 2001, Petitioners filed a Petition for Declaratory Ruling (Petition) with the Board, appealing the JO and PRS. The Petition challenges whether there is Act 250 jurisdiction over the activities described in the JO and PRS.

On February 27, 2001, Chair Harding convened a prehearing conference and on March 23, 2001, she issued a Prehearing Conference Report and Order (PHCR&O).

---

<sup>1</sup>

LUP 6F0134 is the permit for the Swanton Industrial Park and is not specifically at issue in this proceeding.

From April through October of 2001, Petitioners sought three 90-day postponements of all filing deadlines established in the PHCR&O. The basis for the need for additional time was that Petitioners were applying for a permit amendment as required by the JO and PRS.

Chair Harding granted the first two 90-day extensions and then granted a third extension of 45 days.

Petitioners subsequently filed a complete amendment application and the Commission granted an amended permit LUP #6F0362-2 on March 13, 2002.

LUP #6F0362-2 asserts Act 250 jurisdiction over the three changes described above.

Neither Petitioners nor any other party challenged or otherwise appealed LUP #6F0362-2.

On April 30, 2002, Chair Harding issued a Chair's Proposed Dismissal Order. The Order stated that, pursuant to EBR 16(B), unless a party filed an objection to the proposed dismissal on or before May 7, 2002, the Order would be binding on all parties and a final Dismissal Order would be issued.

No objection was filed.

## **II. CONCLUSIONS OF LAW**

The Board and district commissions are charged to protect and conserve the lands and environment of the state. 1969 Vt. Laws, No. 250 § 1 (Adj. Sess.). An administrative agency has discretion to reject a withdrawal or dismissal of an appeal if it would prejudice the public interest that the agency is charged to protect. *Ronald L. Saldi*, #5W1088-1-EB, Memorandum of Decision at 3 (Oct. 1, 1996); *and see Rockwell Park Associates and Bruce J. Levinisky*, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); *H.A. Manosh Corp.*, Declaratory Ruling #247 (Dec. 13, 1991).

Dismissing the Petition for Declaratory Ruling will not prejudice the public interest that the Board is charged to protect. The Commission granted Petitioners an amendment to their land use permit which is now final. The interests of the public are therefore adequately protected.

Re: New England Container Company and Roland Devost  
Declaratory Ruling Request #393  
Dismissal Order  
Page 3

---

**III. ORDER**

1. The Petition for Declaratory Ruling is dismissed with prejudice.

Dated at Montpelier, Vermont this 10<sup>th</sup> day of May, 2002.

ENVIRONMENTAL BOARD

/s/ Marcy Harding  
Marcy Harding, Chair